

ARNOLDO RIVERA
Claimant

JOSTENS PRINTING & PUBLISHING
Respondent

CONSTITUTION STATE SERVICE COMPANY
Insurance Carrier

ORDER

ISSUES

Respondent and its insurance carrier contend Judge Benedict erred. They argue that claimant failed to provide respondent with timely notice of the accidental injury as required by K.S.A. 44-520 (Furse 1993). Therefore, they request the Board to reverse the preliminary hearing Order and deny benefits.

Conversely, claimant requests the Board to affirm the preliminary hearing Order. In the alternative, claimant contends respondent and its insurance carrier's application for Board review was not timely filed and, therefore, the Board should dismiss this appeal.

The only issues before the Board on this appeal are:

1. Did respondent and its insurance carrier file a timely application for Board review?
2. If so, did claimant provide respondent with timely notice of the accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The preliminary hearing Order should be affirmed.
2. The Workers Compensation Act provides that parties have 10 days to appeal a Judge's preliminary hearing award, excluding Saturdays, Sundays and legal holidays. The Act reads, in part:

. . . All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party **within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation.** . . .¹
(Emphasis added.)

3. The Judge entered the preliminary hearing Order on February 9, 2001. By administrative regulation, the effective date of the Order was February 10, 2001.² Therefore, the first day of the 10-day period to appeal the Order was Monday, February 12, 2001. Excluding the intervening Saturdays and Sundays, and excluding Washington's Birthday as a legal holiday (February 19, 2001), the 10-day appeal period ran through Monday, February 26, 2001. The Board concludes that respondent and its insurance carrier's appeal was timely as the Board received respondent and its insurance carrier's Petition for Review on February 26, 2001.

4. Claimant injured his back on June 1, 2000, while working for respondent and handling boxes of books. Claimant worked second shift from 3 p.m. to 11 p.m. The accident occurred at approximately 9 p.m. and claimant rested the last two hours of his shift. The next day claimant sought medical treatment from the Shawnee County Health Agency.

5. After seeing Shawnee County Health Agency for his back on June 2, 2000, claimant took the medical slip that he was given and presented it to one of his supervisors. The slip stated that claimant was able to return to work that same day but that he should not lift over 15 pounds until Monday, June 5, 2000. The supervisor looked at the slip and returned it to claimant. Claimant, who has difficulty speaking and understanding English, testified that he thought he was providing notice of his work-related injury to respondent when he presented the medical slip to the warehouse general supervisor and stated:

¹ K.S.A. 1999 Supp. 44-551(b)(1).

² K.A.R. 51-18-2(a).

Last night I feel pain. And this morning, I can't put my shoes on. And I have to go to the clinic, and the doctor gave me this note and pills.³

Claimant did not work after presenting the medical slip as the company had a decreasing workload and had plans to lay off some of its workers. Claimant was caught in that layoff.

6. Respondent's warehouse general supervisor, Eric Steinmetz, neither recalls the alleged June 2, 2000 conversation with claimant nor the June 2, 2000 medical slip. But Mr. Steinmetz also testified that he was very busy during that period of time.

7. On July 12, 2000, claimant returned to respondent's plant and spoke with the employee relations representative, Kim Anguiano. After claimant told her he was hurt at work, Ms. Anguiano prepared an incident report.

8. The Board finds that it is more probably true than not that claimant did speak with the warehouse supervisor on June 2, 2000, after receiving the medical slip. The Board also finds that claimant believed he had notified respondent of his back injury by presenting the June 2, 2000 medical slip and speaking with the supervisor. The Board further finds and concludes that because of claimant's inability to converse in English the warehouse supervisor did not understand that claimant had injured his back at work the night before. The Board agrees with the Judge that just cause existed and, therefore, claimant had 75 days to report the accidental injury.⁴

9. Claimant provided respondent with timely notice of the accidental injury as notice was definitely given on July 12, 2000, when claimant met with Ms. Anguiano.

WHEREFORE, the Board affirms the February 9, 2001 preliminary hearing Order.

IT IS SO ORDERED.

Dated this ____ day of May 2001.

BOARD MEMBER

c: Chris Miller, Lawrence, KS
John F. Carpinelli, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director

³ See transcript of preliminary hearing, February 7, 2001; pp. 22, 23.

⁴ See K.S.A. 44-520 (Furse 1993).